

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO. 00-6027-CR-ZLOCH
Magistrate Judge Seltzer

UNITED STATES OF AMERICA,
Plaintiff,

v.

JOHNNIE POWELL,
Defendant.

RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE
APR 25 2000
[Signature]

**DEFENDANT'S MOTION TO DISMISS INDICTMENT FOR
FAILURE TO ALLEGE ALL ESSENTIAL ELEMENTS OF THE CRIME**

COMES NOW the defendant, Johnnie Powell, by and through his undersigned attorney, and files his Motion To Dismiss Indictment For Failure To Allege All Essential Elements of the Crime and states as follows:

1. On February 1, 2000, a grand jury of this Court returned a five count indictment against the defendant. All five counts charge the defendant with tax evasion in violation of 26 U.S.C. § 7201.

2. Section 7201 provides in pertinent part that "[a]ny person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony" 26 U.S.C. § 7201.

3. According to Derivation Table II in the appendix to the Internal Revenue Code (1954 & 1986), section 7201 was derived from several different sections of the Internal Revenue Code of 1939. *See* Exhibit 1.

[Signature]
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4. Of these various sections from the 1939 Code, only section 145 pertains to income taxes. All the other sections dealt with excise or other non-income type taxes.

5. Section 7201 actually is only the penalty provision which was taken from a section of the 1939 Internal Revenue Code during the process of recodification from 1939 to 1954.

6. When section 7201 is examined apart from the internal revenue law from which it was extracted, it is impossible to determine the particular tax a person must attempt to evade or defeat to warrant the imposition of the criminal sanction prescribed.

7. However, derivation table I in the appendix to the 1954 and 1986 versions of the Code shows that section 7201 was specifically derived from section 145 of the 1939 Code and not from any of the other sections listed in derivation table II. *See* Exhibit 3.

8. Although section 145 is comprised of two subparts, it is only subpart (b) that contains almost verbatim, the language found in section 7201 and the pivotal words “to evade or defeat.”

9. Specifically, section 145(b) provided that “[a]ny person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof . . . shall be guilty of a felony”

10. Section 145 itself was derived from section 145 of chapter 289, 52 Stat. 513 (1938) and reflects the exact language of the statute. *See* Exhibit 11.

11. When read in the context of the law from which it was derived, section 7201 clearly shows that the internal revenue law intended to punish a particular and limited class of taxpayer, not just any ordinary taxpayer the Government decides to prosecute.

12. The person subject to the penalties of 7201 must be a person with the following three characteristics: (1) a person required to collect a tax; (2) a person required to account for a tax; and (3) a person required to pay over a tax.

13. The only person required to collect, account for, and pay over any tax is a withholding agent. *See Exhibit 8.* As a result, section 7201 applies to withholding agents and nobody else. *But see United States v. Ward*, 833 F.2d 1538 (11th Cir. 1987) (rejecting distinguishable argument that the only persons liable for income tax are the withholding agents of nonresident aliens and foreign corporations).

14. Accordingly, when read in its historical context, § 7201, as informed by § 145, requires proof of the following elements: (1) the defendant was a person required to collect a tax; (2) the defendant was a person required to account for a tax; (3) the defendant was a person required to pay over a tax; (4) the defendant, if such a person, had collected a tax and willfully attempted to evade or defeat the tax by failing to account for it and by failing to pay over the tax.

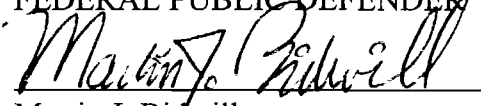
15. An indictment shall allege all essential elements of the offense. *United States v. Debrow*, 346 U.S. 374 (1953). As all five counts of the indictment fail to allege all of the essential elements of the crime of tax evasion under 26 U.S.C. § 7201, all counts violate the Fifth Amendment, specifically the Due Process Clause and the Indictment clause. Accordingly, the Court should dismiss all counts of the indictment.

WHEREFORE the defendant prays that the Court grant this motion and dismiss the indictment.

Respectfully submitted,

KATHLEEN M. WILLIAMS
FEDERAL PUBLIC DEFENDER

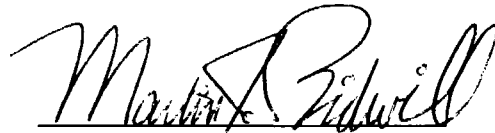
By:



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the aforementioned motion was mailed on this 24TH day of April, 2000, to Robin Rosenbaum, Assistant United States Attorney, 500 East Broward Boulevard, Suite 700, Fort Lauderdale, Florida 33394.


Martin J. Bidwill

APPENDIX—TABLE II

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TABLE II—Continued

1954 Code section number	1939 Code section number	1954 Code section number	1939 Code section number
6901(g)---	311(e), 1025(g).	7209-----	1425(a).
6901(h)---	311(f), 900(e), 1025(f).	7210-----	3616(b).
6901(i)---		7211-----	3325.
6902(a)---	1119(a).	7212(a)---	3601(c).
6902(b)---	1119(b).	7212(b)---	3601(c)(2).
6903(a)---	312(a), 901(a), 1026(a).	7213(a)(1)-	55(f)(1).
6903(b)---	312(c), 901(c), 1026(c).	7213(a)(2)-	55(f)(2).
6904-----		7213(a)(3)-	55(f)(3).
7001(a)---	150.	7213(b)---	4047(a)(1).
7001(b)---		7213(c)---	
7011(a)---	3270(a).	7214(a)---	4047(e).
7011(b)---	3280(a).	7214(b)---	4047.
7012-----		7214(c)---	
7101-----	44(d), 56(c)(2), 112(b)(6)(D), 131(c), 146(b), 272(j), 273(f), 822(a)(2), 871(h), 872(f), 926, 1012(i), 1013(f), 1145, 1818(a), 2302(e), 2322(e), 2352(e), 2474, 2569(b), 2653(d), 3360(d)(2)(B), 3412(d), 3413, 3660(b), 3722(c), 3724(c), 3943, 3992, 4010, and 6 U.S.C. 15.	7231-----	150.
7102-----	3676.	7232-----	3412(d).
7103-----		7233(1)---	1929(a)(1).
7121(a)---	3760.	7233(2)---	1929(a)(2).
7121(b)---	3760.	7234(a)---	2308(a).
7122(a)---	3761.	7234(b)---	2308(c).
7122(b)---	3761.	7234(c)---	2308(h).
7123-----		7234(d)(1)-	2308(i)(1).
7201-----	145(a), (b), 153(d), 340, 894(b)(2)(B), (C); 937, 1024(a), (b); 1718(a), (b); 1821(a)(1), (2), (b)(4); 2557(b)(2), (b)(3); 2656(f), 2707(b), 2707(c), 3604(c).	7234(d)(2)-	2308(g)(1).
7202-----	145(b), 894(b)(2)(C), 1718(b), 1821(a)(2), 2557(b)(3), 2707(c).	(A).	
7203-----	145(a), 153(d), 340, 894(b)(2)(B), 937, 1024(a), 1718(a), 1821(a)(1), 2557(b)(2), 2707(b), 3604(c).	7234(d)(2)-	2308(g)(2).
7204-----	1634(a).	(B).	
7205-----	1626(d).	7234(d)(3)-	2308(i)(2).
7206(1)---	3809(a).	7234(d)(4)-	2308(d).
7206(2)---	3793(b).	7235(a)---	2326(a).
7206(3)---	3793(a).	7235(b)---	2326(b).
7206(4)---	2656(a), 3321.	7235(c)---	2326(c).
7206(5)---	3762.	7235(d)---	3207(b).
7207-----	894(b)(2), 3616(a), 3672, 3793(b).	7235(e)---	2327.
7208-----	3300(b).	7236-----	2357(b).
7208(1)---	1425(b).	7237(a)---	2557(b)(1), 2596, 3225, 3235.
7208(2)---	1823(a).	7237(b)---	2557(a).
7208(3)---	1822, 1823(b).	7238-----	2570.
7208(4)---	1823(c).	7239(a)---	2656(b).
7208(5)---	3323(a)(3).	7239(b)---	2656(d).
		7240-----	3506.
		7261-----	2409.
		7262-----	3294(a).
		7263(a)---	1929(c).
		7263(b)---	1929(b).
		7264-----	3207(a).
		7265(a)(1)-	2308(b).
		7265(a)(2)-	2326(a)(2).
		7265(b)---	2308(e), 2327(a).
		7265(c)---	2308(j), 2327(a).
		7266(a)(1)-	3211(a).
		7266(a)(2)-	3211(b).
		7266(a)(3)-	3211(c).
		7266(b)---	2357(a).
		7266(c)---	2357(c).
		7266(d)---	2357(d).
		7266(e)---	2357(e).
		7266(f)---	2357(f).
		7267(a)---	2656(j).
		7267(b)---	2656(k).
		7267(c)---	2656(i).
		7267(d)---	2656(h).
		7268-----	3320(a).

TABLE II

1986 CODE TO 1939 CODE

1986 Code section number	1939 Code section number	1986 Code section number	1939 Code section number	1986 Code section number	1939 Code section number
6863(b)(1)	1013(f), (h); 3660(b). 273(g), 872(g), 1013(g).		2569(b), 2653(d), 3360(d)(2)(B), 3412(d), 3413, 3660(b), 3722(c), 3724(c), 3943, 3992, 4010, and 6 U.S.C. 15.	7207	894(b)(2), 3616(a), 3793(b)
6863(b)(2)	273(f), (h); 872(f), (h); 1013(f), (h).			7208	3300(b).
6864				7208(1)	1425(b).
6871(a)	274(a), 1015(a).			7208(2)	1823(a).
6871(b)	274(a), 1015(a).	7102	3676.	7208(3)	1822, 1823.
6872	274(a).	7103		7208(4)	1823(c).
6873(a)	274(b), 1015(b).	7121(a)	3760.	7208(5)	3323(a)(3)
6873(b)		7121(b)	3760.	7209	1425(a).
6901(a)	311(a), 900(a), 1025(a).	7122(a)	3761.	7210	3616(b).
6901(b)	311(a), 900(a), 1025(a).	7122(b)	3761.	7211	3325.
6901(c)	311(b), 900(b), 1025(b).	7123		7212(a)	3601(c).
6901(d)	311(b)(4).	7201	145(a), (b), 153(d), 340, 894(b)(2)(B), (C); 937, 1024(a), (b); 1718(a), (b); 1821(a)(1), (2), (b)(4); 2557(b)(2), (b)(3); 2656(f), 2707(b), 2707(c), 3604(c).	7212(b)	3601(c)(2)
6901(e)	311(c), 1025(c).			7213(a)(1)	55(f)(1).
6901(f)	311(d), 900(c), 1025(d).			7213(a)(2)	55(f)(2).
6901(g)	311(e), 1025(g).			7213(a)(3)	55(f)(3).
6901(h)	311(f), 900(e), 1025(f).			7213(b)	4047(a)(1)
6901(i)				7213(c)	
6902(a)	1119(a).			7214(a)	4047(e).
6902(b)	1119(b).			7214(b)	4047.
6903(a)	312(a), 901(a), 1026(a).	7202	145(b), 894(b)(2)(C), 1718(b), 1821(a)(2), 2557(b)(3), 2707(c).	7214(c)	
6903(b)	312(c), 901(c), 1026(c).			7231	150.
6904				7232	3412(d).
7001(a)	150.			7233(1)	1929(a)(1)
7001(b)				7233(2)	1929(a)(2)
7011(a)	3270(a).	7203	145(a), 153(d), 340, 894(b)(2)(B), 937, 1024(a), 1718(a), 1821(a)(1), 2557(b)(2), 2707(b), 3604(c).	7234(a)	2308(a).
7011(b)	3280(a).			7234(b)	2308(c).
7012				7234(c)	2308(h).
7101	44(d), 56(c)(2), 112(b)(6)(D), 131(c), 146(b), 272(j), 273(f), 822(a)(2), 871(h), 872(f), 926, 1012(i), 1013(f), 1145, 1818(a), 2302(e), 2322(e), 2352(e), 2474,			7234(d)(1)	2308(i)(1).
		7204	1634(a).	7234(d)(2)(A)	2308(g)(1)
		7205	1626(d).	7234(d)(2)(B)	2308(g)(2)
		7206(1)	3809(a).	7234(d)(3)	2308(i)(2).
		7206(2)	3793(b).	7234(d)(4)	2308(d).
		7206(3)	3793(a).	7235(a)	2326(a).
		7206(4)	2656(a), 3321.	7235(b)	2326(b).
		7206(5)	3762.	7235(c)	2326(c).
				7235(d)	3207(b).
				7235(e)	2327.
				7236	2357(b).
				7237(a)	2557(b)(1)
					3225, 32
				7237(b)	2557(a).
				7238	2570.
				7239(a)	2656(b).
				7239(b)	2656(d).
				7240	3506.
				7261	2409.
				7262	3294(a).
				7263(a)	1929(c).
				7263(b)	1929(b).

**ATTEMPT TO EVADE OR DEFEAT TAX
STATUTORY LANGUAGE: 26 U.S.C. § 7201**

§7201. Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined* not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

*For offenses committed after December 31, 1984, the Criminal Fine Enforcement Act of 1984 (P.L. 98-596) enacted 18 U.S.C. § 3623 (1) which increased the maximum permissible fines for both misdemeanors and felonies. For the felony offenses set forth in section 7201, the maximum permissible fine for offenses committed after December 31, 1984, is at least \$250,000 for individuals and \$500,000 for corporations. Alternatively, if any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

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INTERNAL REVENUE CODE OF 1954

TABLE I—Continued

1939 Code section number	1954 Code section number	1939 Code section number	1954 Code section number
124A-----	168.	153(c)-----	6104.
124B-----	169.	153(d)-----	7201, 7203.
125-----	171.	154-----	692.
126-----	691.	161-----	641.
127(a), (b)-----		162(a)-----	642(c).
127(c) (1)-----	1331.	162(b)-----	651, 652, 661, 662.
127(c) (2)-----	1332.	162(c)-----	661.
127(c) (3)-----	1333.	162(d)-----	643, 663.
127(c) (4)-----	1334.	162(e)-----	642.
127(c) (5)-----	1335.	162(f)-----	642.
127(d)-----	1336.	162(g)-----	681.
127(e)-----	1337.	163(a) (1)-----	642.
127(f)-----	1337.	163(a) (2)-----	642.
128-----	1346.	163(b)-----	642.
129-----	269.	163(c)-----	642(a), (1).
130-----	270.	164-----	652, 662.
130A-----	421.	165(a)-----	401, 501(a).
131(a)-----	901.	165(b)-----	402.
131(b)-----	904.	165(c)-----	402.
131(c)-----	905, 6155(a), 7101.	165(d)-----	402.
131(d)-----	905.	166-----	676.
131(e)-----	905.	167-----	677.
131(f)-----	902.	168-----	642.
131(g)-----	901(c).	169(a)-(c)-----	584, 6065.
131(h)-----	903.	169(d) (1)-(3)-----	584.
131(i)-----	905.	169(d) (4)-----	584.
141-----	1501, 1502, 6071, 6081 (a), 6091(b) (2), 6503(a) (2).	169(e)-----	584.
142-----	6012(a), (b), 6065(a).	169(f)-----	6032, 6065(a).
143(a)-----	1451.	169(g)-----	584.
143(b)-----	1441.	170-----	642, 584.
143(c)-----	1461, 6011(a), 6072(a), 6091(b), 6151(a).	171-----	682.
143(d)-----	1462.	172-----	642.
143(e)-----	1463.	181-----	701.
143(f)-----	1464, 6414.	182-----	702.
143(g)-----	1461.	183(a), (b)-----	702, 703.
143(h)-----	1443, 6151.	183(c)-----	702.
144-----	1442, 6151(a).	183(d)-----	703(a).
145-----	7201, 7202, 7203, 7343.	184-----	702.
146-----	443, 6155(a), 6601(a), 6658, 6851, 7101.	186-----	702.
147-----	6041(b), (c); 6071, 6081(a), 6091(a).	187-----	6031, 6063, 6065(a).
148-----	6042, 6043, 6044, 6065(a), 6071, 6081(a), 6091(a).	188-----	706.
149-----	6045, 6065(a), 6071, 6081(a), 6091(a).	189-----	702, 703.
150-----	6071, 6081(a), 6091(a), 7001(a).	190-----	
151-----	7231.	191-----	704.
153(a)-----	6033(b), 6071, 6081(a), 6091(a).	201(a) (1)-----	802.
153(b)-----	6034, 6071, 6081(b), 6091(a).	201(a) (2), (3)-----	807.
		201(b)-----	801.
		201(c) (1)-----	803(a).
		201(c) (2)-----	803(b).
		201(c) (3)-----	803(c).
		201(c) (4)-----	803(d).
		201(c) (5)-----	803(e).
		201(c) (6)-----	803(f).
		201(c) (7)-----	803(g).
		201(d)-----	803(h).
		201(e)-----	803(i).
		201(f)-----	803(j).
		201(g)-----	
		202(a)-----	
		202(b)-----	804(a).
		202(c)-----	806.
		203-----	

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penalty

1939 CODE TO 1986 CODE

1939 Code section number	1986 Code section number	1939 Code section number	1986 Code section number
113(a).....	1012.	116(a).....	913.
113(a)(1).....	1013.	116(b).....	892.
113(a)(2).....	1015.	116(c).....	115.
113(a)(3).....	1015.	116(d).....	115.
113(a)(4).....	1015.	116(e).....	943.
113(a)(5).....	1014.	116(f).....	526.
113(a)(6).....	358, 1031.	116(g).....	893.
113(a)(7).....	362.	116(h).....	121(a)(17).
113(a)(8).....	1033.	116(i).....	912.
113(a)(9).....	1031.	116(j).....	933.
113(a)(10).....	1051.	116(k).....	1221, 1222.
113(a)(11).....	1052.	116(l).....	1202.
113(a)(12).....	733, 732.	117(a).....	1201.
113(a)(13).....	1053.	117(b).....	1212.
113(a)(14).....	334.	117(c).....	1211.
113(a)(15).....	1052.	117(d).....	1212.
113(a)(16).....	1082.	117(e)(1).....	1212.
113(a)(17).....	334.	117(e)(2).....	1212.
113(a)(18).....	307.	117(f).....	1212.
113(a)(19).....	373.	117(g)(1).....	1233.
113(a)(20).....	373.	117(g)(2).....	1234.
113(a)(21).....	373.	117(g)(3).....	1238.
113(a)(22).....	372.	117(h).....	1223.
113(a)(23).....	358.	117(i).....	582.
113(b).....	1011.	117(j).....	1231.
113(b)(1).....	1016.	117(k).....	631.
113(b)(2).....	1016.	117(l).....	1233.
113(b)(3).....	1017.	117(m).....	341.
113(b)(4).....	1018.	117(n).....	1236.
113(c).....	1019.	117(o).....	1239.
113(d).....	1020.	117(p).....	1240.
113(e).....	1022.	118.....	1091.
114(a).....	167(f).	119(a), (b).....	861.
114(b)(1).....	612.	119(c), (d).....	862.
114(b)(2).....	613(b)(3).	119(e).....	861, 862, 863.
114(b)(3).....	613(b)(4).	119(f).....	864.
114(b)(4).....	301, 316.	120.....	173.
115(a).....	301, 316.	121.....	583.
115(b).....	302, 312, 331, 342.	122.....	172.
115(c).....	301.	123.....	77.
115(d).....	301.	124.....	168.
115(e).....	301.	124A.....	169.
115(f).....	305.	124B.....	171.
115(g)(1).....	302.	125.....	691.
115(g)(2).....	303.	126.....	1331.
115(g)(3).....	312.	127(a), (b).....	1332.
115(h).....	302, 346.	127(c)(1).....	1333.
115(i).....	301.	127(c)(2).....	1334.
115(j).....	312.	127(c)(3).....	1335.
115(k).....	312.	127(c)(4).....	1336.
115(l).....	312.	127(c)(5).....	922
115(m).....	312.	127(d).....	923

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UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS
ENACTED DURING THE FIRST SESSION OF THE
SEVENTY-SIXTH CONGRESS
OF THE UNITED STATES OF AMERICA

1939

AND

TREATIES, INTERNATIONAL AGREEMENTS OTHER
THAN TREATIES, AND PROCLAMATIONS

COMPILED, EDITED, INDEXED, AND PUBLISHED BY AUTHORITY OF LAW
UNDER THE DIRECTION OF THE SECRETARY OF STATE

VOLUME 53

PART 1

INTERNAL REVENUE CODE

APPROVED FEBRUARY 10, 1939



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1939

EXHIBIT 4

2 CODIFICATION OF INTERNAL REVENUE LAWS

PART VI—MISCELLANEOUS PROVISIONS

Sec. 61. Laws made applicable.
 Sec. 62. Rules and regulations.
 Sec. 63. Publication of statistics.
 Sec. 64. Definitions.

SUBCHAPTER C—SUPPLEMENTAL PROVISIONS

SUPPLEMENT A—RATES OF TAX

Sec. 101. Exemptions from tax on corporations.
 Sec. 102. Surtax on corporations improperly accumulating surplus.
 Sec. 103. Rates of tax on citizens and corporations of certain foreign c.
 Sec. 104. Banks and trust companies.
 Sec. 105. Sale of oil or gas properties.
 Sec. 106. Claims against United States involving acquisition of property.

SUPPLEMENT B—COMPUTATION OF NET INCOME

Sec. 111. Determination of amount of, and recognition of, gain or loss.
 Sec. 112. Recognition of gain or loss.
 Sec. 113. Adjusted basis for determining gain or loss.
 Sec. 114. Basis for depreciation and depletion.
 Sec. 115. Distributions by corporations.
 Sec. 116. Exclusions from gross income.
 Sec. 117. Capital gains and losses.
 Sec. 118. Loss from wash sales of stock or securities.
 Sec. 119. Income from sources within United States.
 Sec. 120. Unlimited deduction for charitable and other contributions.
 Sec. 121. Deduction of dividends paid on certain preferred stock of c.
 corporations.

SUPPLEMENT C—CREDITS AGAINST TAX

Sec. 131. Taxes of foreign countries and possessions of United States.

SUPPLEMENT D—RETURNS AND PAYMENT OF TAX

Sec. 141. Consolidated returns of railroad corporations.
 Sec. 142. Fiduciary returns.
 Sec. 143. Withholding of tax at source.
 Sec. 144. Payment of corporation income tax at source.
 Sec. 145. Penalties.
 Sec. 146. Closing by Commissioner of taxable year.
 Sec. 147. Information at source.
 Sec. 148. Information by corporations.
 Sec. 149. Returns of brokers.
 Sec. 150. Collection of foreign items.
 Sec. 151. Foreign personal holding companies.

SUPPLEMENT E—ESTATES AND TRUSTS

Sec. 161. Imposition of tax.
 Sec. 162. Net income.
 Sec. 163. Credits against net income.
 Sec. 164. Different taxable years.
 Sec. 165. Employees' trusts.
 Sec. 166. Revocable trusts.
 Sec. 167. Income for benefit of grantor.
 Sec. 168. Taxes of foreign countries and possessions of United States.
 Sec. 169. Common trust funds.

SUPPLEMENT F—PARTNERSHIPS

Sec. 181. Partnership not taxable.
 Sec. 182. Tax of partners.
 Sec. 183. Computation of partnership income.
 Sec. 184. Credits against net income.
 Sec. 185. Earned income.
 Sec. 186. Taxes of foreign countries and possessions of United States.
 Sec. 187. Partnership returns.
 Sec. 188. Different taxable years of partner and partnership.

SUPPLEMENT G—INSURANCE COMPANIES

Sec. 201. Tax on life insurance companies.
 Sec. 202. Gross income of life insurance companies.
 Sec. 203. Net income of life insurance companies.

EXHIBIT 5

other cases the affiliated group making a consolidated return shall not be entitled to the benefits of such subsection, regardless of the fact that one or more of the corporations in the group are in bankruptcy or in receivership.

(k) **ALLOCATION OF INCOME AND DEDUCTIONS.**—

For allocation of income and deductions of related trades or businesses, see section 45.

SEC. 142. FIDUCIARY RETURNS.

(a) **REQUIREMENT OF RETURN.**—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this chapter and such other information for the purpose of carrying out the provisions of this chapter as the Commissioner with the approval of the Secretary may by regulations prescribe—

(1) Every individual having a net income for the taxable year of \$1,000 or over, if single, or if married and not living with husband or wife;

(2) Every individual having a net income for the taxable year of \$2,500 or over, if married and living with husband or wife;

(3) Every individual having a gross income for the taxable year of \$5,000 or over, regardless of the amount of his net income;

(4) Every estate the net income of which for the taxable year is \$1,000 or over;

(5) Every trust the net income of which for the taxable year is \$100 or over;

(6) Every estate or trust the gross income of which for the taxable year is \$5,000 or over, regardless of the amount of the net income; and

(7) Every estate or trust of which any beneficiary is a non-resident alien.

(b) **JOINT FIDUCIARIES.**—Under such regulations as the Commissioner with the approval of the Secretary may prescribe a return made by one of two or more joint fiduciaries and filed in the office of the collector of the district where such fiduciary resides shall be sufficient compliance with the above requirement. Such fiduciary shall make oath (1) that he has sufficient knowledge of the affairs of the individual, estate, or trust for which the return is made, to enable him to make the return, and (2) that the return is, to the best of his knowledge and belief, true and correct.

(c) **LAW APPLICABLE TO FIDUCIARIES.**—Any fiduciary required to make a return under this chapter shall be subject to all the provisions of law which apply to individuals.

SEC. 143. WITHHOLDING OF TAX AT SOURCE.

(a) **TAX-FREE COVENANT BONDS.**—

(1) **REQUIREMENT OF WITHHOLDING.**—In any case where bonds, mortgages, or deeds of trust, or other similar obligations of a corporation, issued before January 1, 1934, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed by this chapter upon the obligee, or to reimburse the obligee for any portion of the tax, or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon, or to retain therefrom under any law of the United States, the obligor shall deduct and withhold a tax equal to 2 per centum of the interest upon such bonds, mortgages, deeds of trust, or other obligations, whether such interest is payable annually or at shorter or longer periods, if payable to an individual, a partnership, or a foreign corporation not engaged in trade or business within the United States and not having any

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office or place of business therein: *Provided*, That if the liability assumed by the obligor does not exceed 2 per centum of the interest, then the deduction and withholding shall be at the following rates: (A) 10 per centum in the case of a nonresident alien individual (except that such rate shall be reduced, in the case of a resident of a contiguous country, to such rate, not less than 5 per centum, as may be provided by treaty with such country), or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, (B) in the case of such a foreign corporation, 15 per centum, and (C) 2 per centum in the case of other individuals and partnerships: *Provided further*, That if the owners of such obligations are not known to the withholding agent the Commissioner may authorize such deduction and withholding to be at the rate of 2 per centum, or, if the liability assumed by the obligor does not exceed 2 per centum of the interest, then at the rate of 10 per centum.

(2) **BENEFIT OF CREDITS AGAINST NET INCOME.**—Such deduction and withholding shall not be required in the case of a citizen or resident entitled to receive such interest, if he files with the withholding agent on or before February 1 a signed notice in writing claiming the benefit of the credits provided in section 25 (b); nor in the case of a nonresident alien individual if so provided for in regulations prescribed by the Commissioner under section 215.

(3) **INCOME OF OBLIGOR AND OBLIGEE.**—The obligor shall not be allowed a deduction for the payment of the tax imposed by this chapter, or any other tax paid pursuant to the tax-free covenant clause, nor shall such tax be included in the gross income of the obligee.

(b) **NONRESIDENT ALIENS.**—All persons, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States, having the control, receipt, custody, disposal, or payment of interest (except interest on deposits with persons carrying on the banking business paid to persons not engaged in business in the United States and not having an office or place of business therein), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (but only to the extent that any of the above items constitutes gross income from sources within the United States), of any nonresident alien individual, or of any partnership not engaged in trade or business within the United States and not having any office or place of business therein and composed in whole or in part of nonresident aliens, shall (except in the cases provided for in subsection (a) of this section and except as otherwise provided in regulations prescribed by the Commissioner under section 215) deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 10 per centum thereof, except that such rate shall be reduced, in the case of a nonresident alien individual a resident of a contiguous country, to such rate (not less than 5 per centum) as may be provided by treaty with such country: *Provided*, That no such deduction or withholding shall be required in the case of dividends paid by a foreign corporation unless (1) such corporation is engaged in trade or business within the United States or has an office or place of business therein, and (2) more than 85 per centum of the gross income of such corporation for the three-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was derived from sources within the United States as determined under the provisions of section 119: *Provided further*, That the Commissioner may authorize such tax to be deducted and withheld from the interest upon any securities

the owners of which are not known to the withholding agent. Under regulations prescribed by the Commissioner, with the approval of the Secretary, there may be exempted from such deduction and withholding the compensation for personal services of nonresident alien individuals who enter and leave the United States at frequent intervals.

creation & imposition of
a liability for tax by
persons required to
deduct and withhold
such taxes

(c) **RETURN AND PAYMENT.**—Every person required to deduct and withhold any tax under this section shall make return thereof on or before March 15 of each year and shall on or before June 15, in lieu of the time prescribed in section 56, pay the tax to the official of the United States Government authorized to receive it. Every such person is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this section.

(d) **INCOME OF RECIPIENT.**—Income upon which any tax is required to be withheld at the source under this section shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

(e) **TAX PAID BY RECIPIENT.**—If any tax required under this section to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed upon or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

(f) **REFUNDS AND CREDITS.**—Where there has been an overpayment of tax under this section any refund or credit made under the provisions of section 322 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

(g) **CROSS REFERENCE.**—

For definition of "withholding agent", see section 3797 (a) (16).

SEC. 144. PAYMENT OF CORPORATION INCOME TAX AT SOURCE.

In the case of foreign corporations subject to taxation under this chapter not engaged in trade or business within the United States and not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items of income as is provided in section 143 a tax equal to 15 per centum thereof, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country; and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: *Provided*, That in the case of interest described in subsection (a) of that section (relating to tax-free covenant bonds) the deduction and withholding shall be at the rate specified in such subsection.

SEC. 145. PENALTIES.

(a) **FAILURE TO FILE RETURNS, SUBMIT INFORMATION, OR PAY TAX.**—Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned

applies to
anyone who
willfully fails to

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for not more than one year, or both, together with the costs of prosecution.

(b) **FAILURE TO COLLECT AND PAY OVER TAX, OR ATTEMPT TO DEFEAT OR EVADE TAX.**—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) **PERSON DEFINED.**—The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(d) **CROSS REFERENCE.**—

For penalties for failure to file information returns with respect to foreign personal holding companies and foreign corporations, see section 340.

SEC. 146. CLOSING BY COMMISSIONER OF TAXABLE YEAR.

(a) **TAX IN JEOPARDY.**—

(1) **DEPARTURE OF TAXPAYER OR REMOVAL OF PROPERTY FROM UNITED STATES.**—If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the Commissioner shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the finding of the Commissioner, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design.

(2) **CORPORATION IN LIQUIDATION.**—If the Commissioner finds that the collection of the tax of a corporation for the current or last preceding taxable year will be jeopardized by the distribution of all or a portion of the assets of such corporation in the liquidation of the whole or any part of its capital stock, the Commissioner shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the last preceding taxable year or so much of such tax as is unpaid, whether or not the time otherwise allowed by law for filing return and paying the tax has expired; and such taxes shall thereupon become immediately due and payable.

(b) **SECURITY FOR PAYMENT.**—A taxpayer who is not in default in making any return or paying income, war-profits, or excess-profits tax under any Act of Congress may furnish to the United States, under regulations to be prescribed by the Commissioner, with the approval of the Secretary, security approved by the Commissioner

26 USC 7201
mirrors language
from (b); applies
to persons
required to
collect, report,

VI CODIFICATION OF INTERNAL REVENUE LAWS

TABLE A.—Derivation of Internal Revenue Code—Continued

L R. C. section	Date	Volume	Page	Chapter	Section
117.....	1938, May 28	52	500	289	117.
118.....	do.....	52	503	289	118.
119.....	do.....	52	503	289	119.
120.....	do.....	52	506	289	120.
121.....	do.....	52	506	289	121.
131.....	do.....	52	506	289	131.
141.....	do.....	52	508	289	141.
142.....	do.....	52	510	289	142.
143 (a)-(f).....	do.....	52	511	289	143.
143 (g).....	do.....	52	511	289	143.
144.....	1938, May 28	52	513	289	144.
145.....	do.....	52	513	289	145.
146.....	do.....	52	513	289	146.
147.....	do.....	52	515	289	147.
148.....	do.....	52	516	289	148.
149.....	do.....	52	516	289	149.
150.....	do.....	52	516	289	150.
151.....	do.....	52	516	289	151.
161.....	do.....	52	517	289	161.
162.....	do.....	52	517	289	162.
163.....	do.....	52	518	289	163.
164.....	do.....	52	518	289	164.
165.....	do.....	52	518	289	165 (a).
166.....	do.....	52	519	289	166.
167.....	do.....	52	519	289	167.
168.....	do.....	52	519	289	168.
169.....	do.....	52	519	289	169 (a)-(g) (1).
181.....	do.....	52	521	289	181.
182.....	do.....	52	521	289	182.
183.....	do.....	52	521	289	183.
184.....	do.....	52	521	289	184.
185.....	do.....	52	522	289	185.
186.....	do.....	52	522	289	186.
187.....	do.....	52	522	289	187.
188.....	do.....	52	522	289	188 (a).
201.....	do.....	52	522	289	201.
202.....	do.....	52	523	289	202.
203.....	do.....	52	523	289	203.
204.....	do.....	52	524	289	204.
205.....	do.....	52	526	289	205.
206.....	do.....	52	526	289	206.
207.....	do.....	52	526	289	207.
211.....	do.....	52	527	289	211.
212.....	do.....	52	528	289	212.
213.....	do.....	52	528	289	213.
214.....	do.....	52	529	289	214.
215.....	do.....	52	529	289	215.
216.....	do.....	52	529	289	216.
217.....	do.....	52	529	289	217.
218.....	do.....	52	530	289	218.
219.....	do.....	52	530	289	219.
231.....	do.....	52	530	289	231.
232.....	do.....	52	531	289	232.
233.....	do.....	52	531	289	233.
234.....	do.....	52	531	289	234.
235.....	do.....	52	531	289	235.
236.....	do.....	52	531	289	236.
237.....	do.....	52	531	289	237.
238.....	do.....	52	532	289	238.
251.....	do.....	52	532	289	251.
252.....	do.....	52	533	289	252.
261.....	do.....	52	533	289	261.
262.....	do.....	52	533	289	262.
263.....	do.....	52	534	289	263.
264.....	do.....	52	534	289	264.
265.....	do.....	52	534	289	265.
271.....	do.....	52	534	289	271.
272.....	do.....	52	535	289	272.
273.....	do.....	52	537	289	273.
274.....	do.....	52	533	289	274.
275.....	do.....	52	539	289	275.
276.....	do.....	52	540	289	276.
277.....	do.....	52	540	289	277.
291.....	do.....	52	540	289	291.
292.....	do.....	52	541	289	292.
293.....	do.....	52	541	289	293.
294.....	do.....	52	541	289	294.
296.....	do.....	52	542	289	296.
297.....	do.....	52	542	289	297.
298.....	do.....	52	542	289	298.
299.....	do.....	52	543	289	299.
311.....	do.....	52	543	289	311.
312.....	do.....	52	544	289	312.
313.....	1938, May 28	52	544	289	321.
321.....	do.....	52	544	289	322.
331.....	do.....	52	545	289	331.
332.....	do.....	52	546	289	332.
333.....	do.....	52	547	289	333.
334.....	do.....	52	548	289	334.
335.....	do.....	52	548	289	335.
336.....	do.....	52	549	289	336.

52 STAT.] 75TH CONG., 3d SESS.—CH. 289—MAY 28, 1938

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(f) **REFUNDS AND CREDITS.**—Where there has been an overpayment of tax under this section any refund or credit made under the provisions of section 322 shall be made to the withholding agent, unless the amount of such tax was actually withheld by the withholding agent.

Refunds and credits.

Post, p. 514.

SEC. 144. PAYMENT OF CORPORATION INCOME TAX AT SOURCE.

In the case of foreign corporations subject to taxation under this title not engaged in trade or business within the United States and not having any office or place of business therein, there shall be deducted and withheld at the source in the same manner and upon the same items of income as is provided in section 143 a tax equal to 15 per centum thereof, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country; and such tax shall be returned and paid in the same manner and subject to the same conditions as provided in that section: *Provided*, That in the case of interest described in subsection (a) of that section (relating to tax-free covenant bonds) the deduction and withholding shall be at the rate specified in such subsection.

Payment of corporation income tax at source.

By foreign corporations not in business in United States.

Amr, p. 511.

Provided. Interest, tax-free covenant bonds.**SEC. 145. PENALTIES.**

(a) Any person required under this title to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this title, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

Penalties.

Willful failure to pay tax, make returns, etc.

Penalty.

(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Willful failure to collect, etc., tax; evading payment, etc.

Penalty.

(c) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

"Person" defined.

(d) For penalties for failure to file information returns with respect to foreign personal holding companies and foreign corporations, see section 340.

Foreign personal holding companies, etc., failure to file information returns.

Post, p. 552.

SEC. 146. CLOSING BY COMMISSIONER OF TAXABLE YEAR.

(a) **TAX IN JEOPARDY.**—

(1) **DEPARTURE OF TAXPAYER OR REMOVAL OF PROPERTY FROM UNITED STATES.**—If the Commissioner finds that a taxpayer designs quickly to depart from the United States or to remove

Closing by Commissioner of taxable year. Tax in jeopardy.

Departure of taxpayer or removal of property from United States.

26525*—38—33

original source
for penalty
provision for
tax evasion as
found in 26
USC 7201

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INTERNAL REVENUE CODE OF 1954

TABLE I—Continued

1939 Code section number	1954 Code section number	1939 Code section number	1954 Code section number
124A-----	168.	153(c)-----	6104.
124B-----	169.	153(d)-----	7201, 7203.
125-----	171.	154-----	692.
126-----	691.	161-----	641.
127(a), (b)-----		162(a)-----	642(c).
127(e) (1)-----	1331.	162(b)-----	651, 652, 661, 662.
127(e) (2)-----	1332.	162(c)-----	661.
127(e) (3)-----	1333.	162(d)-----	643, 663.
127(e) (4)-----	1334.	162(e)-----	642.
127(e) (5)-----	1335.	162(f)-----	642.
127(d)-----	1336.	162(g)-----	681.
127(e)-----	1337.	163(a) (1)-----	642.
127(f)-----	1337.	163(a) (2)-----	642.
128-----	1346.	163(b)-----	642.
129-----	269.	163(c)-----	642(a), (1).
130-----	270.	164-----	652, 662.
130A-----	421.	165(a)-----	401, 501(a).
131(a)-----	901.	165(b)-----	402.
131(b)-----	904.	165(c)-----	402.
131(c)-----	905, 6155(a), 7101.	165(d)-----	402.
131(d)-----	905.	166-----	676.
131(e)-----	905.	167-----	677.
131(f)-----	902.	168-----	642.
131(g)-----	901(c).	169(a)-(c)-----	584, 6065.
131(h)-----	903.	169(d) (1)-(3)-----	584.
131(i)-----	905.	169(d) (4)-----	584.
141-----	1501, 1502, 6071, 6081 (a), 6091(b) (2), 6503(a) (2).	169(e)-----	584.
	6012(a), (b), 6065(a).	169(f)-----	6032, 6065(a).
142-----		169(g)-----	584.
143(a)-----	1451.	170-----	642, 584.
143(b)-----	1441.	171-----	682.
143(c)-----	1401, 6011(a), 6072(a), 6091(b), 6151(a).	172-----	642.
143(d)-----	1462.	181-----	701.
143(e)-----	1463.	182-----	702.
143(f)-----	1464, 6414.	183(a), (b)-----	702, 703.
143(g)-----	1461.	183(c)-----	702.
143(h)-----	1443, 6151.	183(d)-----	703(a).
144-----	1442, 6151(a).	184-----	702.
145-----	7201, 7202, 7203, 7343.	186-----	702.
146-----	443, 6155(a), 6601(a), 6658, 6851, 7101.	187-----	6031, 6063, 6065(a).
147-----	6041(b), (c); 6071, 6081(a), 6091(a).	188-----	706.
148-----	6042, 6043, 6044, 6065(a), 6071, 6081(a), 6091(a).	189-----	702, 703.
149-----	6045, 6065(a), 6071, 6081(a), 6091(a).	190-----	
150-----	6071, 6081(a), 6091(a), 7001(a), 7231.	191-----	704.
151-----		201(a) (1)-----	802.
153(a)-----	6033(b), 6071, 6081(a), 6091(a).	201(a) (2), (3)-----	807.
153(b)-----	6034, 6071, 6081(b), 6091(a).	201(b)-----	801.
		201(c) (1)-----	803(a).
		201(c) (2)-----	803(b).
		201(c) (3)-----	803(c).
		201(c) (4)-----	803(d).
		201(c) (5)-----	803(e).
		201(c) (6)-----	803(f).
		201(c) (7)-----	803(g).
		201(d)-----	803(h).
		201(e)-----	803(i).
		201(f)-----	803(j).
		201(g)-----	
		202(a)-----	
		202(b)-----	804(a).
		202(c)-----	806.
		203-----	

sections making
person liable &
required